

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 Paul Jones,)
5 Plaintiff,)
6 vs.) Case No. 19cv11093-TSH
7)
8 Montachusett Regional)
9 Transit Authority, et al.,)
Defendants.)

10 BEFORE: The Honorable Timothy S. Hillman

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12 Telephonic Motion Hearing

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15 United States District Court
16 595 Main Street
17 Worcester, Massachusetts
18 August 13, 2020

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22 Marianne Kusa-Ryll, RDR, CRR
23 Official Court Reporter
24 United States District Court
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Mr. -- Mr. Jones has filed a complaint, as your Honor

1 is aware, against MART and the various individual defendants
2 under Title VII, Chapter 151D, and then a claim for the
3 negligent infliction of emotional distress.

4 We had originally filed a motion to dismiss on the
5 grounds that MART was not Mr. Jones' and is not Mr. Jones'
6 employer. As your Honor knows, that was denied so we're now at
7 the summary judgment stage in which we will have to take the
8 allegations contained in the pleadings as true, and so we've
9 provided a statement of fact, most of which Mr. Jones admits,
10 agrees to, in various documents attached.

11 So as regards the claims for -- under Title VII in
12 Chapter 151D, under those claims, and this was the subject of
13 the motion to dismiss, Mr. Jones has to show that the
14 transportation as MART was his employer.

15 And so now that we're able to provide an affidavit and
16 there are -- there are documents; and, in fact, Mr. Jones
17 admits to the fact that what we rely upon is more --

18 THE PLAINTIFF: Object.

19 MS. ECKERT: -- conditioned --

20 THE PLAINTIFF: Object.

21 MS. ECKERT: I'm sorry?

22 THE PLAINTIFF: Object. This -- I --

23 THE COURT: Mr. Jones. Mr. Jones, I'm going to give
24 you a -- just let me talk, please. I'm going to give you a
25 chance to speak, and you can clarify anything you want. I only

1 allow objections during trial.

2 Please continue, Ms. Eckert.

3 MS. ECKERT: Sure. So under multifactor tests there
4 are several indices of what is an employer versus otherwise;
5 and one of those or some of those has the right to control
6 where and how the work is performed, the work done, and whether
7 the work is performed on the premises, whether there's a
8 continuing relationship between the worker and employer,
9 whether the employer has a right to assign additional projects,
10 et cetera.

11 So in our statement of facts, we list several factors
12 that if you look at the responses to our statement of facts we
13 believe are undisputed.

14 And the first is that MART entered into these
15 transportation provider subcontracts not with Mr. Jones, but
16 with his company, CCRD. So once that is performed by CCRD and
17 CCRD employees, it's not performed on the premises of MART.
18 There's no continuous relationship that MART has with
19 Mr. Jones; rather, again, the subcontract is with CCRD. MART
20 does not have the right to assign Mr. Jones, or CCRD for that
21 matter, additional projects.

22 Rather, the way this works is that there's an
23 automated assignment system based on low cost, low rate that
24 the computer goes through basically and makes an assignment
25 when the clients of HHS needs services.

1 Let's see. MART doesn't have the right to assign CCRD
2 additional paths other than when they're assigned
3 these -- these rides with transportation services, and MART
4 does not set Mr. Jones' hours and certainly does not set the
5 rates, which I think has caused some of the issues here for
6 Mr. Jones, because the rates -- his rates or his company's
7 rates are higher than others; and so when the automatic system
8 goes to assign transportation services, his company is not the
9 first to be selected.

10 But based on the factors and those facts that again if
11 look at the statement of facts in the response, it -- the
12 finding can be found and we believe should be found that MART
13 is not Mr. Jones' employer.

14 I do -- well, I guess I'll go through the motion
15 first, and then I'll get to the 56(f) motion that was filed.

16 Even if MART were his employer, to go even further on
17 a Title VII and a 151D claim, Mr. Jones would have to show that
18 he suffers from some adverse employment action; and again,
19 while he at this stage has said in his complaint that he has
20 been penalized, fined, et cetera, as set forth in our statement
21 of facts and supporting documentation, Mr. Jones himself has
22 not suffered an adverse action. Again, the subcontract is with
23 CCRD, but even if that's the case, there's some -- there were
24 some fines that were imposed, but that's on CCRD, and that's
25 not on Mr. Jones.

1 The assignment of rides again is automatic based on
2 computer. There is a call-out system, which again is done by
3 rates like the lowest rate first going up to the higher rate.

4 Mr. Jones in his complaint complains that we're using
5 his telephone number, but no doubt he would complain if we
6 hadn't used a telephone number to call out because that's how
7 the assignments are made, and he is the dispatcher for his
8 company.

9 And, finally, I'll separate out a little bit for the
10 Title VII and the 151D. Even if there's a finding, and we
11 believe there shouldn't be, based on the undisputed facts that
12 MART is the employer, that somehow Mr. Jones versus CCRD
13 suffered an adverse action, there's no discrimination that's
14 alleged and no evidence -- well, I shouldn't say that's
15 alleged. No evidence, of course, that is certainly no causal
16 connection based on how these rides are assigned.

17 So on Count One and -- I believe, Mr. Jones alleges
18 retaliation, and so Mr. Jones did allege from the outset that
19 he believed he was being discriminated against, and there are
20 documents now in the record that shows how that was addressed,
21 but there's nothing, and Mr. Jones has not presented evidence
22 that the conversations -- and they did spend a lot of time with
23 Mr. Jones going back and forth when he raised concerns about
24 why he wasn't getting assigned more rides, that any of those
25 conversations, that is, not being assigned rides had anything

1 or could be causally connected to his initial complaint.

2 Instead what the evidence and attached shows is that
3 they spent time with Mr. Jones. They provided him additional
4 training to the initial training that he got that all vendors
5 get and any time that -- he did raise the concern. Ms. Badgley
6 would go back and forth, would check it out, you know, why is
7 it that you didn't get assigned that ride, you know, suggesting
8 to him, you know, take a look at the rates. You know, you've
9 still too high. Maybe you should spread out to other areas, et
10 cetera. So there's simply no causal nexus.

11 Count Two, as I understand it, is a hostile work
12 environment claim, again putting aside that it's not the
13 employer. There are no allegations even in the complaint that
14 would create a hostile work environment based on any protected
15 category. There's no allegations of yelling, of racial
16 comments, sexist comments, et cetera, to support such a claim.

17 And then Count Three again, as I understand it, is
18 a -- I'm trying to -- I'm having trouble reading my
19 writing -- my handwriting, but I think the disparate impact
20 claim, meaning that there needs to be a policy in place by MART
21 that has a disparate impact on a protected class saying that
22 there's a policy of discrimination doesn't do that.

23 So, for instance, if he were to say, well, the policy
24 of taking, you know, transportation providers or vendors with
25 the lowest rates somehow disparately impacts minority vendors.

1 I don't know how we would be able to say that. That would be
2 a -- that's a policy. It is MART policy. We start with the
3 lowest rate. But that's not what he's alleging.

4 Instead he's alleging the fact that he believes he's
5 discriminated against is the policy itself. So there's no
6 policy that he anchored that disparate impact claim on that's
7 contained in the complaint. That's Title VII.

8 Under Chapter 151D, Mr. Jones' claim is for
9 discrimination and retaliation for failure to provide a
10 reasonable accommodation. There's nothing that I saw in the
11 complaint and nothing in the response to the motion for summary
12 judgment by Mr. Jones which identifies a -- a disability, why
13 he believes he's a qualified disabled person, but also that he
14 requested a reasonable accomodation. So it's our contention
15 that that should be dismissed as well.

16 And, finally, for the negligent infliction of
17 emotional distress that would be brought under Chapter 258,
18 there is no presentment letter that I am aware of, so that
19 would go out or be dismissed under failure to meet that
20 prerequisite to filing a 258 claim. Negligent affliction of
21 emotional distress under 258 is only brought against the
22 entity. So it would be MART. The individual employees would
23 have to be dismissed.

24 And then the basis for its claim again is
25 discrimination. And so because there are no allegations that

1 we believe supported a discrimination claim, there's no basis
2 for that -- the claim to go forward. You can't just -- well,
3 you can. I mean, you can allege a claim that, you know, that
4 Mr. Jones has done that I -- you know, the negligibly
5 infliction of emotional distress by discriminating against me,
6 you have to prove the underlying discrimination first; and for
7 all the reasons I've stated before, Mr. Jones has not done
8 that.

9 So I don't know if your Honor wants me to briefly
10 address the 56(f) motion, because it might be instructive going
11 forward. If you want me to wait.

12 THE COURT: No, I think I want to hear from Mr. Jones,
13 and then I want to hear him on his motion for judicial notice,
14 and then I'll hear you in opposition.

15 Mr. Jones, so what do you want to say, please, sir?

16 THE PLAINTIFF: Yes. For the record, sir, Paul Jones.
17 And I would like to say that the defendants' attorney stated
18 that I agreed with most of her motion which is -- which I
19 don't.

20 And first of all, I would like to address Count One
21 which is Title VII. The defendant states that I am not -- they
22 are not my employee.

23 Basically, the First Circuit Court in most -- a lot of
24 cases states that as long as they control at least one aspect
25 of the plaintiff they are -- they can be deemed an employee.

1 And they control when, where, and how the work is performed.
2 The job doesn't require high-level expertise. The employee,
3 which there's MART, Montachusett Regional Transit Authority,
4 the employee gets in business, and they do the same business
5 that I do which is provide transportation. The employee can
6 discharge the worker. The worker -- the employee believes that
7 they have created an employee-employer relationship, which I
8 did.

9 So even if they control one aspect of our
10 relationship, which they did, your Honor, they -- you know,
11 they say my rates were higher than other people's. That's not
12 true. All this is talk. We tell each other what the bids are
13 and everything.

14 If you look at my complaint, I put in a \$10 bid. They
15 have in their possession all of the documents that show
16 everybody's bid. They could have easily put in a list of all
17 the bids and said, see, your Honor, it's still better. A \$50
18 bid, and they had a \$10 bid; that's why they did it. So it's
19 in dispute, your Honor, and they controlled at least one aspect
20 of our relationship on a day-in, day-out basis.

21 And as far as the discrimination, your Honor, again,
22 this is summary judgment. I haven't had a chance to propound
23 discovery. If any documents all the -- the defendants have all
24 the documents in their possession for me to prove that they
25 discriminated, retaliated, and caused a work -- a hostile work

1 environment, your Honor.

2 And it's -- the Chapter 151, that's on the other
3 defendants except Montachusett Regional Transit Authority; and,
4 your Honor, Chapter 1 -- 151D, as you know, they filed a motion
5 to dismiss, and there was an R and R report was suggested that
6 I to be able to amend the complaint to reflect the Chapter 151
7 filing these violations, and I have several, your Honor.

8 Your Honor, I was hospitalized over this. I have
9 all -- you know, and I haven't had a chance to get the records
10 from the hospitalization. So I've made the allegation. And
11 during discovery, I will give them all of that, you know.

12 And the retaliation, your Honor, once I filed -- once
13 I took an action and filed a complaint against them, they never
14 gave me any work. They decimated me. They wouldn't give me
15 work for months. All of the staff had to be laid off after I
16 got all the insurance, after I had all the drug tests done,
17 after I paid for training; and they retaliated against me, your
18 Honor. And once I spoke up about it, they really started
19 retaliating on me.

20 When I went to training at MART, which all the vendors
21 do, I arrived for training. They told me that you don't --
22 you're not training today. You're going to wait for Karen
23 Cordio to train you while all the other vendors went in for
24 training.

25 So weeks later I go in for training. She didn't train

1 me properly. She took me into her office. She questioned me.
2 She wants to know my whole history. Ninety percent of the
3 meeting was not about the vendor portal or policy at MART. I
4 was lost. I couldn't understand what was going on.

5 So, then, she told me that oh, the portal's down.
6 I'll tell you what's -- how it is really easy to figure out.
7 And as the defendants' attorney said, oh, they tried to
8 accommodate him and meet with him a few times. Your Honor, I
9 had to fight to get training. I -- I -- you know, I asked them
10 five or ten times. They didn't want to do it.

11 I went to MassHealth, sent letters to MassHealth.
12 MassHealth got involved and said, listen, you need to give this
13 guy proper training. He needs to sit in front of the vendor
14 portal like everybody else. Give him a screen shot of the
15 vender portal. Show him an example, you know, and it's really
16 easy, your Honor, for the portal to work, you know, but there
17 are certain things that you need to know.

18 As far as rates, your Honor, I've had a lower rate
19 than 90 percent of the vendors. They give you a rate card with
20 everybody's rates. They just take the names off. So all you
21 have to do is look at it and say, okay, if everybody's bidding
22 15, I'm not getting any work, I'm going to bid ten. And then
23 once I did that, two months went by, and they're like, oh, we
24 overlooked your ten. They admit it, they overlooked it, you
25 know, so the retaliation has been going on; and if you look at

1 my complaint, your Honor, I put a letter in there, an email
2 from Ivan Roman, who was the manager, my manager at MART, and
3 he wanted me to pay him on the side to train him properly to
4 show him how to defend against MART if I was having problems
5 with my vendor portal not receiving rides, which he knew I did.
6 That's very telling, your Honor. These people need to be
7 deposed, you know.

8 So the discrimination, I made the allegation of
9 discrimination, and I also made the allegation that out of
10 250-plus vendors maybe about 20 or 15 are African-American
11 males. African-American males. They have foreigners, but
12 hardly any African-American males, your Honor.

13 From the onset I think it's discriminated again.
14 That's why I made the complaint. I tried over and over to talk
15 with them to get things done, and it was just like she said, as
16 far as the phone call, retaliation, discrimination. Sure. I
17 had hired a phone operator that sat in the office, and they
18 refused to call her. Instead, they called me on my cell phone
19 while driving. Not once, not twice, not ten, not 20 times a
20 day. 50 to a hundred times a day. And I told them I have a
21 dispatcher in the office, can you please call her. And it's,
22 like, you know, hanging up the phone, and that's discrimination
23 and retaliation. And if we -- I can have discovery we can
24 flush all this stuff out. I made all these allegations in the
25 complaint, your Honor.

1 And like I said this is summary judgment. They have
2 all of the evidence in their possession. All of it.

3 THE COURT: Mr. -- Mr. Jones, you know that discovery
4 is -- is closed, right?

5 THE PLAINTIFF: Closed?

6 THE COURT: Yes, sir.

7 THE PLAINTIFF: I never had --

8 THE COURT: No, just listen. Just listen. There's a
9 scheduling order that sets out the various -- the -- the -- the
10 dates by which certain things have to be accomplished,
11 and -- and one of those is that discovery is closed. I mean,
12 that's why we have summary judgment. We wait until the
13 discovery is -- has closed.

14 THE PLAINTIFF: Your Honor, I have dockets, I have a
15 copy of the docket. There was never a schedule for discovery,
16 your Honor. It went straight from after the R and R
17 maintenance report and suggested that I amend my complaint. We
18 amended the complaint. I amended the complaint. She filed a
19 summary judgment right after that. In my opposition to her
20 summary judgment, I point that out. That's why -- that's why I
21 invoke Rule 56(f).

22 THE COURT: All right. Okay. All right.

23 THE PLAINTIFF: There was -- there was the evidence of
24 the schedule, sir.

25 THE COURT: All right. Thank you. I'll -- I'll check

1 that.

2 THE PLAINTIFF: Yeah.

3 THE COURT: Talk to me about your motion for judicial
4 notice.

5 THE PLAINTIFF: Yes, my motion for judicial notice
6 that I filed is I would like the Court to take notice of this
7 because this is paramount, and it's directly tied into my
8 complaint.

9 In 2016 -- like I said, vendors talk. We're a very
10 small group of people, but we communicate amongst each other.
11 That's how everybody knows everybody's age and what they're
12 doing.

13 So anyway, 2016, after I kept trying to work it out
14 with MART, they wouldn't work it. I said I've got to get the
15 people involved. I reached out to MassHealth. They got me
16 proper training. Well, they got me another session for
17 training. And then when I went there, that didn't work.

18 So anyway I reached out to the Department of Justice
19 and I just told them, look, these people are getting federal
20 money. They're not accommodating. They're not allowing me to
21 participate in the program. I'm spending all of my -- I was
22 going to get married. I spent all my wedding money on
23 everything, like, on expenses. So I reported to the Department
24 of Justice that -- and they said, Well, what are they doing
25 illegal? And I said, Well, they're doing a bunch of stuff

1 illegal. They're letting -- they're letting nonminority
2 vendors have two to three companies, and you can verify that
3 from the secretary of state. They're telling me there's no
4 work when they have these nonminority vendors with two to four
5 companies taking more work than they can handle; and then what
6 they do is they take 200 calls a day, when I don't get ten, and
7 they'll send a hundred out to Uber and Lyft, which is illegal,
8 because only a certified vendor with livery plates, training,
9 can pick up a client.

10 So they were sub -- they were just giving it to Lyft,
11 Lyft charging \$7, and they were billing for \$30, while I'm on
12 the sidelines begging and pleading for work at a higher price.

13 So this July this past, they came to a settlement with
14 MART. I guess they've been investigated, and they found out
15 that it was true, and MART said, okay, we're going to settle
16 this. We don't know which ones did it, but we'll settle for
17 300,000.

18 They got one gentleman who had multiple companies,
19 multiple companies, and was taking all of these trips that he
20 couldn't even handle and pass them onto Lyft and Uber, and Uber
21 is charging seven to \$10, and he's charging 20 to \$30, which is
22 illegal. And this was reported to MART plenty of times.

23 I have clients that I will give her in discovery, if I
24 ever get a chance to get there. And I didn't get a chance to
25 do a scheduling conference and get her discovery. I will give

1 her a list of clients that have Uber and Lyft from various
2 companies, nonminority companies, day in and day out, and they
3 have reported it to MART, and they did nothing. And the
4 Department of Justice, the FBI, the Massachusetts branch of the
5 FBI and the Attorney General for the United States and
6 Massachusetts went in, gave -- laid the evidence out. I know
7 they did research. They did discovery with them, too, which I
8 would like to propound from them. And I know they'd gladly
9 give it to me that show that, yeah, you allowed these people,
10 two or three companies, astronomical rates, take all these
11 calls, and you should have known that they didn't have the
12 capacity, because you know how many vehicles they've got. But
13 they were calling Uber, Lyft, and things of that nature. And
14 this has been going on and on with MART. This is the only
15 time. The same people are there are the same people that was
16 there when the Attorney General arrested three of the
17 scheduling department defendants about seven to ten years ago
18 for allowing a nonminority vendor to have four or five
19 companies in his name, and they were giving him money, and they
20 were giving him all the calls.

21 Now, I'm not suggesting that MRTA's taking money under
22 the table, but that's not for me to --

23 THE COURT: So -- so your -- I think you've answered
24 my question about the judicial notice.

25 Is -- had you -- have you finished on that? You're --

1 you're going a little bit off the track.

2 THE PLAINTIFF: Yeah, I'm finished with that, your
3 Honor, but I would like to point out, your Honor, that I
4 haven't had a chance -- will I be able to speak on the motion
5 for Rule 56(f) that I filed?

6 THE COURT: Sure. Why don't you do that now.

7 THE PLAINTIFF: Okay. The Rule 56(f), I invoked that
8 because, your Honor, they filed a -- I filed -- I filed a
9 complaint. Before they answered, I amended it. They filed a
10 motion to dismiss. I filed an opposition. It went to the R
11 and R, the magistrate. He wrote up an R and R report that
12 said, Mr. Jones -- he dismissed my PCPA claim and said,
13 Mr. Jones, Title VII retaliation, discrimination on opt-out
14 work area should stand, and he should have a chance to amend
15 his Chapter 151D last claim for retaliation. I did that.

16 Upon me filing the second amended complaint, I
17 immediately filed a summary judgment motion. I have not had a
18 chance to get any discovery. Ninety-nine percent of the
19 discovery is in their possession. They have a vendor portal
20 with the click of a button they can print out all the vendors'
21 names from -- all the vendors' companies names, every ride they
22 had, the price they had from 2015 to 2019 and mine. And they
23 can have the cheapest one all the way down to the expensive
24 one. And they could -- that would show a bulk of the problem.

25 And also, I invoked it because I haven't had a chance

1 to get discovery. And, your Honor, there's no -- there was no
2 conference set up. We haven't had -- even had a scheduling
3 conference, you know. And I think you should put this on hold
4 until we have a scheduling conference, we have discovery, and
5 then the summary judgment can come. And I will welcome that,
6 and, you know, give me a chance to get discovery to prove my
7 claims because a lot of this stuff I really don't even have to
8 get it from -- well, I have to get it from MART, but I can get
9 it from other people, like MassHealth, the Department of the
10 Attorney General, the Attorney General of Massachusetts, the
11 Executive Office of Health and Human Service. They'll show all
12 the rates, all the checks that everybody got, who had the
13 lowest and everything. And I would like to depose their --
14 their portal operator that operates the system, because with a
15 click of a mouse, your Honor, they could block you out. You
16 can get no calls, and that will show who had access to the
17 vendor portal and who only had access to call.

18 Getting a call and saying, oh, we've got a ride, an
19 automated dialing caller says, we've got five rides with you,
20 and how I can take them within a minimum of five minutes. It's
21 impossible. It's impossible. And basically, I was being used
22 as a -- after all these guys, the nonminority vendors took
23 their trips, anything that they couldn't make they will call me
24 the same day or the next day and ask me to pick up someone.
25 And when I will pick them up they would say, oh, Worcester was

1 supposed to pick us up. Well, this one they didn't show, and,
2 you know, the Rule 56(f) should stand, and summary judgment
3 should be put off until we have a scheduling conference and a
4 chance for discovery, your Honor, you know.

5 Discovery will be short. We only need six months to
6 do it, and it's very -- the documents I want from them they
7 will be very access -- very easy to access, you know. And
8 I'm -- I'm ready and willing and able to give all my documents,
9 deposited, whatever, but I really need discovery to oppose this
10 summary judgment. I haven't had a chance.

11 THE COURT: Thank you -- thank you, Mr. Jones.

12 THE PLAINTIFF: You're welcome.

13 THE COURT: Ms. Eckert, I'll give you a brief
14 rebuttal, and you can argue about the motion for judicial
15 notice.

16 MS. ECKERT: Okay. Your Honor, we filed an opposition
17 to the 56(f), so we'll rely on that. There was a response to
18 our statement of undisputed facts, and so the information in
19 response to that is contained in our opposition to the 56(f).

20 As far as the judicial notice, different counsel
21 entered into the settlement, and my understanding is and in
22 reviewing the documents that Mr. Jones filed, one is different
23 management now; but, two, there's nothing in those documents
24 that talks about discrimination. My understanding is that they
25 were fined for poor oversight realistically, that they allowed

1 these vendors, and there's nothing in there that says whether
2 they're minority or not to assign by -- by Uber and Lyft, and
3 so that's my understanding.

4 There's also no information and MART is not aware that
5 Mr. Jones was involved in any way, if that was one of the
6 reasons to take judicial notice. So that would be our position
7 that it's just not relevant to Mr. Jones' claims.

8 THE COURT: All right. Thank you, everybody. We're
9 going to take it under advisement. Good job.

10 MS. ECKERT: Thank you, your Honor.

11 THE PLAINTIFF: Thank you very much, your Honor. Have
12 a nice day. Bye.

13 (At 3:15 p.m., Court was adjourned.)

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C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby
certify that the foregoing transcript is a true and accurate
transcription of my stenographic notes before the Honorable
Timothy S. Hillman, to the best of my skill, knowledge, and
ability.

/s/ Marianne Kusa-Ryll

08/13/2020

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter